

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §39.411 and §39.603.

The amendments to §39.411 and §39.603 are adopted *with changes* to the proposed text as published in the July 22, 2016, issue of the *Texas Register* (41 TexReg 5331) and, therefore, will be republished.

The amendments to §39.411(e)(4)(A)(i), (e)(5) (introductory paragraph), (e)(11)(A)(iv) and (v), (e)(13), (f) (introductory paragraph), (f)(8), and (g); and §39.603 will be submitted to the United States Environmental Protection Agency as revisions to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

On February 25, 2016, Texas Aggregates and Concrete Association (TACA) submitted a petition requesting the commission conduct rulemaking to amend public notice rules applicable to initial registration applications for authorization under the Air Quality Standard Permit for Concrete Batch Plants, referred to in this preamble for ease of reference as the CBP standard permit. This permit is distinguishable from the Air Quality Standard Permit for Concrete Batch Plants with Enhanced Controls, which has different notice and public participation requirements. The petition requested amendments to §39.411(e)(11)(A)(iii) and §39.603(a) and (b) to provide for one 30-day public notice of initial registration applications. On April 6, 2016, the commission

considered the petition and directed the executive director to examine the request and initiate rulemaking.

The TACA petition did not address the Air Quality Standard Permit for Concrete Batch Plants with Enhanced Controls authorized under Texas Clean Air Act (TCAA), Texas Health and Safety Code (THSC), §382.05198. The public notice requirements for that standard permit are listed within the permit, and registrations for that permit are not subject to the rules in Chapter 39. Therefore, public notice requirements for that permit are not affected by this adopted rulemaking.

The commission is authorized to adopt standard permits under THSC, §382.05195, which prescribes the procedures the commission must follow to adopt a standard permit. The commission implemented THSC, §382.05195 by adopting rules in 30 TAC Chapter 116, Subchapter F. The rules in Chapter 116, Subchapter F provide that when the executive director drafts a new (or proposes amendments to an existing) standard permit, notice of the proposed permit is published in the *Texas Register* and in newspapers. In addition, TCEQ holds a public meeting to provide stakeholders the opportunity for discussion with TCEQ staff and for submittal of comments regarding the proposed permit. The responses to comments and any changes made to the proposed permit in response to the comments are presented to the commission for consideration in an open meeting, commonly referred to as Agenda. Once adopted, the conditions of the permit will be the same for all owners and operators that register to construct and operate under the standard permit. The standard permits are not

designed to be amended to include tailored permit conditions applicable to an individual registration. The CBP standard permit was last amended by the commission effective December 21, 2012.

Each individual CBP standard permit registration application is subject to the public participation requirements in 30 TAC Chapters 39 and 55. Since 1985, owners or operators registering for authorization to construct and operate a concrete batch plant (under what is known today as the Air Quality Standard Permit for Concrete Batch Plants) have been subject to specific notice requirements for the proposed plant. These public notice requirements for initial registration applications included the opportunity to request a contested case hearing. In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which made changes to notice requirements for initial registration applications that were administratively complete on or after September 1, 1999. Since the rulemaking to implement HB 801 in 1999, and rule amendments adopted in 2010 have been in effect, the commission has required registrants for the CBP standard permit to publish a Notice of Receipt of Application and Intent to Obtain Permit (NORI) which solicits comments for a 15-day period; contested case hearing and public meeting requests are also solicited. At the same time the NORI is published in a newspaper of general circulation in the municipality or in the nearest municipality in which the plant will be located, the registrant is required to place a copy of the registration application in a public place in the county, and to post signs at the proposed facility location. Alternative language publication and signs may also be required.

After TCEQ staff complete the technical review, registrants were required to publish Notice of Application and Preliminary Decision (NAPD), which solicits comments for a 30-day period; hearing requests were also solicited but only if at least one such request was timely made in response to the NORI. At the close of the comment period, the executive director prepares a written response to all timely-filed comments and files the response with the TCEQ's Office of Chief Clerk. If hearing requests were submitted in response to the NORI, hearing requests may be submitted during the 30-day period after the mailing of the executive director's response to comments. Based on comments, registrants may update their registration application representations as to how they will construct and operate under the standard permit; historically, this has been very uncommon. Also, because the permit conditions in the CBP standard permit are established by the commission when the standard permit is adopted, the executive director cannot change any permit conditions for an individual registration in response to comments.

The public has expressed concern that the 15-day period is often not enough time to review the registration application, determine whether to comment, request a public meeting or contested case hearing, and then to timely submit the information to the TCEQ. This rulemaking requires one 30-day consolidated notice for registrants of the CBP standard permit that will serve as both the NORI and NAPD. To ensure the public has the opportunity to review a complete registration application, the consolidated notice will be published after the administrative and technical reviews of the

registration application are completed. The consolidated notice establishes a single, 30-day notice period during which comments and requests for public meeting or contested case hearing can be submitted. With one notice instead of two, TCEQ expects there will be more clarity regarding the restrictions on the timeframe to submit hearing requests.

Concurrently with this adoption, and published in this issue of the *Texas Register*, the commission is adopting an amendment to §55.152 in Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment, to provide for a 30-day notice period during which comments and requests for public meeting or contested case hearing can be submitted in response to the consolidated NORI and NAPD. The 30-day period begins on the last date of newspaper publication, and the comment period is automatically extended to the close of any public meeting, as required by §55.152(b). As provided for in §55.201, which implements Senate Bill 709 (84th Texas Legislature, 2015), hearing requests must be based on the requestor's timely submitted comments.

The public participation requirements for renewals of registrations under the CBP standard permit are not affected by the adopted amendments in Chapters 39 and 55.

Section by Section Discussion

In addition to the amendments discussed later, the adopted rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas*

Register style and format requirements. Such changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally not specifically discussed in this preamble. Specifically, §§39.411(e)(11)(A)(iv), 39.411(e)(13), and 39.603(c) were amended to reflect the actual name of the CBP standard permit, which is "Air Quality Standard Permit for Concrete Batch Plants."

§39.411, Text of Public Notice

Clause (iv) is added to §39.411(e)(11)(A), which amends requirements for the notice text for initial registration applications received on or after January 1, 2017, for concrete batch plants that register to operate under the CBP standard permit. The adopted clause states that the text of the notice shall include three statements, adopted as subclauses (I) – (III). First, a request for a contested case hearing must be filed with the TCEQ's Office of Chief Clerk before the close of the 30-day comment period following the last publication of the consolidated NORI and NAPD. Second, if no hearing requests are received by the end of the 30-day comment period, there is no further opportunity to request a contested case hearing. Third, if any hearing requests are received before the close of the 30-day comment period, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments. Existing clause (iv) is re-designated as clause (v).

Subsection (f) is amended to add a reference to the consolidated notice adopted in

§39.603(c). In addition, because the effective date of §39.411 will change, the references to "the effective date of this section" in §39.411(e)(4)(A)(i) and (ii), (e)(5), (f)(8) and (9), and (g) are updated to provide for the precise date of June 18, 2010, which is the actual effective date for these particular requirements.

§39.603, Newspaper Notice

Adopted §39.603(c) provides that, for initial registration applications received on or after January 1, 2017, for authorization to construct and operate a concrete batch plant under the CBP standard permit, owners and operators are required to publish a consolidated NORI and NAPD. The consolidated NORI and NAPD must be published no later than 30 days after the chief clerk has mailed the preliminary decision concurrently with the consolidated NORI and NAPD to the registrant. In addition, the new consolidated notice must contain the text as required by §39.411(f).

Existing subsections (c) – (e) are re-lettered as subsections (d) – (f). References to "registrant" are added to subsections (d) – (f) to ensure that these requirements also apply to initial registration applications for the CBP standard permit.

Final Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major

environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to Chapter 39 are not specifically intended to protect the environment or reduce risks to human health from environmental exposure to air pollutants, but instead amend the notice requirements for initial registration applications for concrete batch plants under the CBP standard permit, which are procedural in nature.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the adopted amendments to Chapter 39 amends the notice requirements for initial registration applications for the CBP standard permit authorizations. This adopted rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was developed

to meet the requirements for public participation in the TCAA as identified in the Statutory Authority section of this preamble.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The adopted rulemaking to Chapter 39 amends the notice requirements for initial registration applications for concrete batch plants under the CBP standard permit, which are procedural in nature. Promulgation and enforcement of the adopted rulemaking will not burden private real property. The adopted amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor

will the amendments affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted amendments are not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the consistency with the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

The adopted rules will not require any changes to outstanding federal operating permits.

Public Comment

The commission held a public hearing on August 10, 2016. The comment period closed on August 22, 2016. The commission received comments from Texas State Representative Alma Allen (Representative Allen), the City of Dallas, the City of Houston, TACA, and the United States Environmental Protection Agency, Region 6 (EPA).

Response to Comments

Changes in the Number of Notices and the Amount of Time to Submit Comments and Requests for a Contested Case Hearing

Comment

Representative Allen commented that while she does not believe that TCEQ's intent in helping the operators reach their goal for one notice is to shorten the time within which the community is able to organize and provide feedback, the shorter time is the most egregious consequence of this proposal.

The City of Houston commented that the current rules grant community members and citizens a valuable window of opportunity to evaluate the potential consequences of the plant proposed in their communities. They are able to obtain, review, and present information about the negative effects concrete batch plants have on communities. Shortening the notice period will burden citizens by limiting their opportunity to participate in important registration and permitting decisions. For those in socioeconomically disadvantaged communities who historically have had less of a voice in public processes and who have fewer resources to deploy to protect themselves, the burden will be particularly onerous.

The City of Dallas commented that the proposed rules place the interests of industry above protection of public health and the environment. There is no benefit to the public by limiting their right to participate in the process of TCEQ review of air permit applications for concrete batch plants.

Response

This rulemaking was not intended to adversely affect anyone's opportunity or ability to comment on a concrete batch plant registration application, or their ability to ask questions of a registrant who is seeking approval to construct and operate under the CBP standard permit. Although the time to comment and request a contested case hearing has been a 15-day period since 1985 when the opportunity to request a contested case hearing for a concrete batch plant was added to the TCAA, the commission has received comments on previously submitted CBP standard permit registration applications expressing concern that the 15-day period to comment and request a hearing is too short. In response, this rulemaking extends that period to 30 days. In addition, the commission determined that 30 days is reasonable because the permit conditions cannot change in response to comment.

The commission disagrees that the rule amendments place the interests of industry above protection of public health and the environment. The CBP standard permit, last amended in 2012, is protective of human health and the environment, as discussed elsewhere in this Response to Comments. The commission has made no changes to the rules in response to these comments

Comment

Representative Allen commented that the current 15-day NORI period is often not enough time to allow citizens to search the newspapers, review the permit and understand its implications, decide to request a public meeting or a contested case

hearing, and then to submit the information to TCEQ in a timely fashion. However, the proposed single 30-day period for the permit is also inadequate. Although the proposed rule allows additional time to request a contested case hearing, it shortens the time with which the public is able to organize and provide public comment.

The City of Dallas commented that it is very concerned that the proposed rules will substantially and unjustifiably limit the public's right to receive notices, submit comments, request public meetings, and request public hearings during the permit application process for the CBP standard permit. The proposed consolidation of the NORI and NAPD into one notice is a significant decrease in time and would diminish public opportunity for input to the agency. This would substantially limit the public's existing right to engage in the permitting process.

TACA supports the executive director's proposed rulemaking, including the specific amendments to §39.411 and §39.603. This rulemaking will allow the public more time to review the registration application. Because the initial comment period will increase from a 15-day period to a 30-day period, this rulemaking will also ensure an additional 15 days to request a contested case hearing. TACA encourages the TCEQ to adopt the rules as proposed.

Response

The purpose of this rulemaking is to establish a single, 30-day notice period during which comments and requests for public meeting or contested case hearing can be

submitted. In response to previously submitted CBP standard permit registration applications, the public has expressed concerns that the 15-day period is often not enough time to review the registration application, determine whether to comment, request a public meeting or a contested case hearing, and then to timely submit the information to the TCEQ.

The consolidated NORI and NAPD will not be prepared or mailed to the registrant for publication until the registration application is both administratively and technically complete. To ensure that it is clear that the public has the opportunity to review the complete registration application with the established CBP standard permit within the 30-day comment period, §39.603(c) was changed from proposal in response to these comments to delete the reference to the executive director declaring the registration application administratively complete. In addition, §55.152(a)(2) is adopted to provide for a 30-day notice period.

Companies submitting registration applications to construct under the CBP standard permit are required to publish notice in a newspaper, and, in some cases, in alternate language publications. In addition, they are also required to post signs at the proposed site of the concrete batch plant. Both the signs, which are often the most effective for notifying nearby residents, and the newspaper notices provide instructions on how to obtain additional information about the registration application. A copy of the registration application is also available in a local public

place. The TCEQ or the registrant may be contacted for more information about the registration application or CBP standard permit conditions.

The commission understands that citizens who live or work near a proposed location of a concrete batch plant may have never before received notice of a proposed concrete batch plant, or may be unaware of the commission's CBP standard permit, the process for submitting comments, or the opportunity to request a public meeting, or, for certain persons, the opportunity to request a contested case hearing. People can stay informed of any notices in their area by signing up for a mailing list, or going online to <http://www14.tceq.texas.gov/epic/eNotice/> and pull up notices by ZIP Code, County, etc.

To develop their comments and questions, citizens can review both the registration application and the commission's CBP standard permit. Unlike case-by-case applications which are often hundreds of pages in length and may contain air dispersion modeling, registration applications for a CBP standard permit are, by their nature, less extensive (on average they contain approximately 40 pages) and air dispersion modeling is not required. As discussed earlier, the conditions of the permit will be the same for all owners and operators that register to construct and operate under the CBP standard permit. Standard permits are not designed to be amended to include tailored permit conditions applicable to an individual registration. As such, the permit conditions cannot change in response to

comments. The CBP standard permit was last amended by the commission effective December 21, 2012. In the actual permit document, currently located at <https://www.tceq.texas.gov/assets/public/permitting/air/NewSourceReview/Mechanical/cbpsp-finalpreamble.pdf>, the commission explains its basis for finding that the permit is protective of human health and the environment, and its basis for the specific permit conditions.

The deadline for submitting comments is extended to the end of any public meeting held regarding the registration application, if the meeting is held more than 30 days after the date of the last newspaper publication. Public meetings provide an opportunity for the public to submit comments regarding the registration applications. For CBP standard permit registration applications, the TCEQ will hold a public meeting if there is significant public interest in a registration application or if requested by a legislator from the area of the proposed project. A request for a public meeting must be submitted to the chief clerk during the 30-day public comment period. Comments, public meeting requests, and requests for contested case hearings may be submitted in writing to the commission via regular mail, fax, hand delivery, or electronic submittal. Oral comments are accepted at public meetings. All timely comments are responded to in writing by the executive director at or prior to the issuance of the CBP standard permit registration. Requests for contested case hearing must be received within 30 days of the publication of the consolidated notice. All timely hearing requests are considered by the commissioners in their open meeting.

Within the 30-day period, citizens should have adequate time to become aware of the notice, review the registration application and CBP standard permit, prepare and submit comments, and request a public meeting or a contested case hearing. For these reasons, and because the permit conditions cannot change in response to comment, the commission has determined that a 30-day comment period is reasonable.

Comment

Representative Allen commented that she and her constituents in House District 131 feel that rather than shortening the length of time the public is able to weigh in, they should be given, at minimum, the same amount of time they have presently, which is 45 days. Although they appreciate the extension of the contested case hearing deadline, and understand the need for consolidation and greater efficiency in the process, they do not see the need for the public to give up precious time in the process for providing feedback, when they have so little say to begin with. The residents are almost always on the losing side of these permits, having to put up with increased traffic, deteriorating roads, and dust particles. Having the time to weigh in on the application gives residents the ability to form a dialogue with the applicant, wherein they are able to discuss things like alternative routes, locations, and dust mitigation techniques. They support a 45-day notice that combines the entire application and review process, which would better serve the interests of both the communities and the owners or operators.

Response

As discussed earlier, because the registration application information is not voluminous, the commission has determined that 30 days is appropriate. The commission understands that citizens may want to meet with representatives of the applicant to discuss local concerns, including topics for which the TCEQ does not have jurisdiction, such as alternative routes for trucks and the specific location of the concrete batch plant. This can be accomplished by meetings between citizens and the applicant, or at a public meeting conducted by TCEQ. The commission has made no changes to the rules in response to this comment.

Comment

TACA commented that the proposed rule changes will expedite the permitting process, and encourages the TCEQ to adopt the rules as proposed.

Response

The purpose of this rulemaking is to establish a single, 30-day notice period during which comments and requests for public meeting or contested case hearing can be submitted. In response to previously submitted CBP standard permit registration applications, the public has expressed concerns that the 15-day period is often not enough time to review the registration application, determine whether to comment, request a public meeting or a contested case hearing, and then to timely submit the information to the TCEQ. Specifically, with one notice instead of two, TCEQ

anticipates that there will be more clarity regarding the timeframe to submit hearing requests.

Under the amended rules, the administrative and technical reviews will occur prior to issuance of the consolidated NORI and NAPD for publication by the registrant. The TCEQ will consider the comments submitted and prepare a response to comments, which is also included as part of the processing time. If hearing requests are received, additional time is required for the commission to consider those requests at an open meeting. If a contested case hearing is held, the final decision on the registration application may be one year or longer after it is received.

The change to a consolidated notice may result in a reduction in the application processing time due to the notice consolidation. However, that reduction cannot be estimated at this time. Between September 1, 2015, and September 1, 2016, the average time to process CBP standard permit registration applications with both NORI and NAPD was 129 days. This includes registration applications with comments, public meetings and, where applicable, contested case hearing requests considered by the commission, including those for which a hearing request was granted and a contested case hearing was held.

Although there will be no separate NAPD publication under the adopted rules, the factor that primarily determines the length of time for a permit to be issued is the quality of the registration application. The permitting process is shortest when

registrants provide a complete application at submittal, and newspaper publication occurs within a day or a few days after the notice is provided to the registrant by TCEQ. To expedite the review process, applicants can elect to submit their registration applications under the commission's expedited permitting program.

Comment

TACA commented that the change in public notice requirements would provide a cost savings to operators of concrete batch plants.

Response

As discussed in the Public Benefits and Costs portion of the proposed rule preamble, registrants for the CBP standard permit will save approximately 50% on publication costs by having one publication instead of two for English language publication and also for any required alternate language publication. One round of English language publication costs are estimated between \$674 and \$9,759, depending on which newspaper is used for publication, the day of the week, and how many words are in the notice. The cost of publishing in newspapers in larger cities is greater than newspaper publication costs in smaller cities.

Comment

TACA commented that the proposed rule changes will eliminate duplicative public notice requirements. TACA encourages the TCEQ to adopt the rules as proposed.

Response

Prior to these rule amendments, a registrant was required to publish two separate public notices, NORI and NAPD. Because the registration application is for a CBP standard permit, the only new information for the public to review during the NAPD period were updates to the application that may have been requested as part of the technical review. As discussed previously in this preamble, the permit conditions are established when the standard permit is issued by the commission under THSC, §382.05195 and 30 TAC Chapter 116, Subchapter F and cannot be changed or tailored for a specific facility. Under the adopted rules, the technical review will be complete prior to issuance of the consolidated notice.

These permits are distinguishable from applications for individual case-by-case permit applications. For those applications, the NORI does not include a draft permit for public review and comment. Only the NAPD for individual case-by-case permit applications provides a draft permit with conditions tailored to the specific type of facilities and emissions to be authorized that is subject to public review and comment. Those comments may result in changes to the draft permit.

These two separate procedures have resulted in some frustration that comments submitted in response to the NAPD for a CBP standard permit cannot result in changes to the permit.

Because the CBP standard permit process differs from the individual case-by-case permit application process, providing a separate NAPD for a CBP standard permit registration does not provide the public new information to form the basis for submitting comments that may affect the outcome of the TCEQ review. Because the CBP standard permit registration applications are less complex than many other applications, having the technical review completed and the standard permit available for review during one 30-day comment period is expected to result in comments that are more specifically focused on the particular registration application.

Concerns Regarding Protection of Public Health

Comment

The City of Houston commented that there is no doubt that concrete batch facility operations emit particulate air pollution. Particulate air pollution is known to be correlated with high-risk asthma attacks and cardiac arrest. There are currently 18 concrete batch facilities in a four-mile radius within the socio-economically disadvantaged Houston Super Neighborhoods of Central/Southeast, South Acres/Crestmont Park, and Minnetex. These Houston neighborhoods also experience particulate air pollution from other sources, including 13 metal recycling facilities. In summary, there are numerous facilities in socioeconomic or disadvantaged neighborhoods in Houston, which experience a higher rate of air pollution and health effects higher than the remainder of the city. Unsurprisingly, each of these particular Houston neighborhoods is within a "high risk of asthma attack and cardiac arrest" area

according to the American Journal of Preventative Medicine and Public Health. See Loren H. Raun, *Geospatial Analysis for Targeting Out-of-Hospital Cardiac Arrest Intervention*, American Journal of Preventive Medicine, August 2013, at 137-42; Loren H. Raun, *Factors Affecting Ambulance Utilization for Asthma Attack Treatment: Understanding Where to Target Interventions*, Public Health, March 2015. Health officials are concerned that, in the aggregate, the density of air pollution sources, such as concrete batch plants, may result in cumulative concentration levels that pose an unacceptable health risk to neighborhoods like these.

The rules should not be changed to make it harder for communities and citizens to protect themselves by participating in regulatory proceedings, and therefore the City of Houston opposes the proposed rules.

The City of Dallas commented that the proposed rules do not further the TCEQ's stated mission of protecting the state's public health and natural resources consistent with sustainable economic development.

Response

The TCEQ previously conducted a comprehensive protectiveness review during the development of the CBP standard permit to ensure that the requirements of the permit would protect human health and the environment. This review took into consideration many variables and assumed conditions that maximize emissions impacts to develop an air dispersion modeling approach that was conservative and

applicable to any location in the state.

The primary contaminants evaluated during the protectiveness review as potential emissions from concrete batch plants included particulate matter (PM) (aerodynamic diameter of equal to or less than 10 and 2.5 micrometers (PM₁₀ and PM_{2.5})), carbon monoxide (CO), nitrogen dioxide (NO₂), sulfur dioxide (SO₂), nickel particulate, and formaldehyde. When the conditions of this CBP standard permit are met, including annual, daily, and hourly production limits, concentrations of these pollutants would be below their respective health protective values, including the National Ambient Air Quality Standards (NAAQS) or TCEQ Effects Screening Levels (ESLs).

The NAAQS values for CO, NO₂, SO₂, and PM are derived to protect human health with an adequate margin of safety to include sensitive populations such as children, the elderly, and individuals that suffer from respiratory diseases such as asthma and chronic obstructive pulmonary disease (COPD). Similar criteria are used to derive the ESLs. Thus, if short-term and long-term emissions do not exceed these values, the operation of facilities with these types of emissions would not pose a threat to human health or welfare. This particular area of Houston has been in compliance with the NAAQS for all of the aforementioned air contaminants and will be required to continue to meet the NAAQS in the future even if those standards change.

The concern regarding the 18 concrete batch plants is addressed in two ways: via the conservatism used to derive the health protective NAAQS and ESLs, which take into consideration cumulative and aggregate exposures; and by the thorough review of air dispersion modeling representations of these types of facilities that are conducted during the development of the CBP standard permit. Modeling data indicate that maximum concentrations of pollutant emissions would typically occur a relatively short distance from the emissions source. Therefore, review of other off-site sources is not necessary when determining approval of registration applications for this particular standard permit. Concrete batch plants located greater than 550 feet from sources with similar emissions are predicted to not exceed the health protective NAAQS or ESLs, even when operating simultaneously. The CBP standard permit requires the owner or operator to locate the concrete batch plant at least 550 feet from any crushing plant or hot mix asphalt plant. If these distance conditions in the standard permit are not met, then sources with similar emissions such as rock crushers, hot mix asphalt plants, or other concrete batch plants cannot operate at the same time.

As discussed earlier, there are layers of conservatism incorporated into the CBP standard permit. This includes the modeling assumptions used to establish the operational limitations, which include fabric or cartridge filter systems to control PM; distance restrictions regarding the location of the concrete batch plant relative to any crushing plant, hot mix asphalt plant, or other concrete batch plant; distance restrictions regarding the location of the suction shroud baghouse exhaust,

stationary equipment, stockpiles, or vehicles used for the operation of the concrete batch plant; and material throughput by limiting the site production to, for example, no more than 300 cubic yards in any one hour and no more than 6,000 cubic yards per day. In addition, the NAAQS and ESLs are not only health-protective, but include a margin of safety to accommodate sensitive populations, aggregate exposures, and cumulative exposures. Thus, when the conditions of the CBP standard permit are met, plants operating under these permits are not expected to adversely affect human health, welfare, or the environment.

The comment also refers to areas of Houston where the neighborhoods coexisting with concrete batch plants and metal recycling facilities are characterized as "high risk of asthma and cardiac arrest," according to a scientific study published by Raun and colleagues. TCEQ staff reviewed this publication and has concerns with the interpretation and utilization of data therein. Primary concerns are that the study of correlation between emergency medical service (EMS) calls and criteria pollutants (CO, NO₂, SO₂, and PM_{2.5}) were in fact inconsistent, indicating a weakness in these associations and suggesting that the pollutants did not cause the EMS calls. The study authors also utilized a highly conservative linear model to estimate risks. Available data suggest that this type of model would overestimate risk for many criteria pollutants and would be inappropriate to use based on the fact that many, if not all, criteria pollutants demonstrate a threshold, meaning that there is a concentration below which harmful effects are not observed. Due to lack of proper controls, inconsistency in the body of available scientific evidence in the study, and

acknowledgement of the limitations of their model, the results of these studies may be considered of interest, but not reliably predictive of health effects, particularly at lower, ambient pollutant levels.

Therefore, TCEQ's extensive evaluation clearly indicates that concrete batch plants operating in this area of Houston do not pose a threat to human health or welfare due to the parameters and limitations applied to the CBP standard permit. This conclusion is supported by the TCEQ's monitoring data in the area that demonstrate compliance with the PM NAAQS, which accommodate both aggregate and cumulative exposure. The commission has made no changes to the rules in response to these comments.

SIP Revision

Comment

EPA commented that the proposed amendments to §39.411(e)(4)(A)(ii) should not be submitted to the EPA as a revision to the SIP because this part of the rule pertains to permitting of Hazardous Air Pollutants under the Federal Clean Air Act, §112(g), 40 Code of Federal Regulations Part 63, and regulation of Hazardous Air Pollutants is outside the scope of the SIP.

Response

The commission agrees and is not submitting §39.411(e)(4)(A)(ii) as a revision to the SIP.

SUBCHAPTER H: APPLICABILITY AND GENERAL PROVISIONS

§39.411

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §5.115, Persons Affected in Commission Hearings' Notice of Application, which requires the commission to determine affected persons and provide certain notice of applications. The amendment is also adopted under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the

state's air; THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which prescribes the public participation requirements for certain applications filed with the commission; and THSC, §382.058, concerning Notice of and Hearing on Construction of Concrete Plant Under Permit by Rule, Standard Permit, or Exemption, which prescribes authorization requirements for certain concrete batch plants. In addition, the amendment is also adopted under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.*, which requires states to submit state implementation plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The adopted amendment implements THSC, §382.056 and §382.058.

§39.411. Text of Public Notice.

(a) Applicants shall use notice text provided and approved by the agency. The executive director may approve changes to notice text before notice being given.

(b) When Notice of Receipt of Application and Intent to Obtain Permit by publication or by mail is required by Subchapters H and K of this chapter (relating to Applicability and General Provisions and Public Notice of Air Quality Permit Applications) for air quality permit applications, those applications are subject to

subsections (e) - (h) of this section. When notice of receipt of application and intent to obtain permit by publication or by mail is required by Subchapters H - J and L of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, and Public Notice of Injection Well and Other Specific Applications), Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits), or for Subchapter M of this chapter (relating to Public Notice for Radioactive Material Licenses), the text of the notice must include the following information:

(1) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location and nature of the proposed activity;

(4) a brief description of public comment procedures, including:

(A) a statement that the executive director will respond to comments raising issues that are relevant and material or otherwise significant; and

(B) a statement in the notice for any permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues that are relevant and material to the commission's decision that are raised during the comment period can be considered if a contested case hearing is granted;

(5) a brief description of procedures by which the public may participate in the final permit decision and, if applicable, how to request a public meeting, contested case hearing, reconsideration of the executive director's decision, a notice and comment hearing, or a statement that later notice will describe procedures for public participation, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity;

(6) the application or permit number;

(7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying;

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(10) for notices of municipal solid waste applications, a statement that a person who may be affected by the facility or proposed facility is entitled to request a contested case hearing from the commission. This statement must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice; and

(11) any additional information required by the executive director or needed to satisfy public notice requirements of any federally authorized program; or

(12) for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted; and

(13) for Class 3 modifications of hazardous industrial solid waste permits, the statement "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(c) Unless mailed notice is otherwise provided for under this section, the chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this title (relating to Mailed Notice). When notice of application and preliminary decision by publication or by mail is required by Subchapters G - J and L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1) - (11) of this section;

(2) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted, or a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(3) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications and Other

Authorizations), a statement that the executive director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

(4) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(5) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's preliminary decision are available for review and copying;

(6) the deadline to file comments or request a public meeting. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity; and

(7) for radioactive material licenses under Chapter 336 of this title, if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted.

(d) When notice of a public meeting or notice of a hearing by publication or by mail is required by Subchapters G - J and L of this chapter, the text of the notice must include the following information:

(1) the information required by subsection (b)(1) - (3), (6) - (8), and (11) of this section;

(2) the date, time, and place of the meeting or hearing, and a brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures; and

(3) for notices of public meetings only, a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's preliminary decision may be submitted and a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

(e) When Notice of Receipt of Application and Intent to Obtain Permit by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the information in this subsection:

(1) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location and nature of the proposed activity;

(4) a brief description of public comment procedures, including:

(A) a statement that the executive director will respond to:

(i) all comments regarding applications for Prevention of Significant Deterioration and Nonattainment permits under Chapter 116, Subchapter B of this title (relating to New Source Review Permits) and Plant-wide Applicability Limit permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) filed on or after June 18, 2010;

(ii) all comments regarding applications subject to the requirements of Chapter 116, Subchapter E of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA,

§112(g), 40 CFR Part 63)), whether for construction or reconstruction, filed on or after June 18, 2010; and

(iii) for all other air quality permit applications, comments raising issues that are relevant and material or otherwise significant; and

(B) a statement in the notice for any air quality permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues that are relevant and material to the commission's decision that are raised during the comment period can be considered if a contested case hearing is granted;

(5) a brief description of procedures by which the public may participate in the final permit decision and, if applicable, how to request a public meeting, contested case hearing, reconsideration of the executive director's decision, a notice and comment hearing, or a statement that later notice will describe procedures for public participation, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. Where applicable, the notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located if there is substantial public interest in the proposed activity when requested by any interested person for the following applications that are filed on or after June 18, 2010:

(A) air quality permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment in Chapter 116, Subchapter B of this title;

(B) applications for the establishment or renewal of, or an increase in, a plant-wide applicability limit subject to Chapter 116 of this title; and

(C) applications subject to the requirements of Chapter 116, Subchapter E of this title, whether for construction or reconstruction;

(6) the application or permit number;

(7) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(8) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application is available for review and copying;

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(10) at a minimum, a listing of criteria pollutants for which authorization is sought in the application which are regulated under national ambient air quality standards or under state standards in Chapters 111, 112, 113, 115, and 117 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter, Control of Air Pollution from Sulfur Compounds, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, Control of Air Pollution from Volatile Organic Compounds, and Control of Air Pollution from Nitrogen Compounds);

(11) If notice is for any air quality permit application except those listed in paragraphs (12) and (15) of this subsection, the following information must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice:

(A) a statement that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a contested case hearing from the commission within the following specified time periods;

(i) for air quality permit applications subject to the requirements for Prevention of Significant Deterioration and Nonattainment permits in Chapter 116, Subchapter B of this title a statement that a request for a contested case

hearing must be received by the commission by the end of the comment period or within 30 days after the mailing of the executive director's response to comments;

(ii) for air quality permit applications subject to the requirements of Chapter 116, Subchapter E of this title, whether for construction or reconstruction, a statement that a request for a contested case hearing must be received by the commission by the end of the comment period or within 30 days after the mailing of the executive director's response to comments;

(iii) for renewals of air quality permits that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted and the application does not involve a facility for which the applicant's compliance history is in the lowest classification under Texas Water Code, §5.753 and §5.754 and the commission's rules in Chapter 60 of this title (relating to Compliance History), a statement that a request for a contested case hearing must be received by the commission before the close of the 15-day comment period provided in response to the last publication of Notice of Receipt of Application and Intent to Obtain Permit;

(iv) for initial registrations for concrete batch plants under the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits) received on or after January 1, 2017, the following statements:

(I) a request for a contested case hearing must be received by the commission before the close of the comment period provided in response to the last publication of the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision in §39.603(c) of this title (relating to Newspaper Notice);

(II) if no hearing requests are received by the end of the 30-day comment period there is no further opportunity to request a contested case hearing; and

(III) if any hearing requests are received before the close of the 30-day comment period, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments; or

(v) for all air quality permit applications other than those in clauses (i) – (iv) of this subparagraph, a statement that a request for a contested case hearing must be received by the commission before the close of the 30-day comment period provided in response to the last publication of Notice of Receipt of Application and Intent to Obtain Permit. If no hearing requests are received by the end of the 30-day comment period following the last publication of Notice of Receipt of Application

and Intent to Obtain Permit, there is no further opportunity to request a contested case hearing. If any hearing requests are received before the close of the 30-day comment period following the last publication of Notice of Receipt of Application and Intent to Obtain Permit, the opportunity to file a request for a contested case hearing is extended to 30 days after the mailing of the executive director's response to comments;

(B) a statement that a request for a contested case hearing must be received by the commission;

(C) a statement that a contested case hearing request must include the requester's location relative to the proposed facility or activity;

(D) a statement that a contested case hearing request should include a description of how the requestor will be adversely affected by the proposed facility or activity in a manner not common to the general public, including a description of the requestor's uses of property which may be impacted by the proposed facility or activity;

(E) a statement that only relevant and material issues raised during the comment period can be considered if a contested case hearing request is granted; and

(F) if notice is for air quality permit applications described in subparagraph (A)(v) of this paragraph, a statement that when no hearing requests are timely received the applicant shall publish a Notice of Application and Preliminary Decision that provides an opportunity for public comment and to request a public meeting.

(12) if notice is for air quality applications for a permit under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities), filed on or before January 1, 2018, a Multiple Plant Permit under Chapter 116, Subchapter J of this title (relating to Multiple Plant Permits), or for a Plant-wide Applicability Limit under Chapter 116 of this title, a statement that any person is entitled to request a public meeting or a notice and comment hearing, as applicable from the commission;

(13) notification that a person residing within 440 yards of a concrete batch plant authorized by the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title is an affected person who is entitled to request a contested case hearing;

(14) the statement: "The facility's compliance file, if any exists, is available for public review in the regional office of the Texas Commission on Environmental Quality;"

(15) if notice is for an application for an air quality permit under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review) that would authorize only emissions of greenhouse gases as defined in §101.1 of this title (relating to Definitions), a statement that any interested person is entitled to request a public meeting or a notice and comment hearing, as applicable, from the commission; and

(16) any additional information required by the executive director or needed to satisfy federal public notice requirements.

(f) The chief clerk shall mail Notice of Application and Preliminary Decision, or the consolidated Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision, as provided for in §39.603(c) of this title, to those listed in §39.602 of this title (relating to Mailed Notice). When notice of application and preliminary decision by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the information in this subsection:

(1) the information required by subsection (e) of this section;

(2) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(3) the location, at a public place in the county with internet access in which the facility is located or proposed to be located, at which a copy of the complete application and the executive director's draft permit and preliminary decision are available for review and copying;

(4) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's draft permit and, where applicable, preliminary decision, preliminary determination summary, and air quality analysis may be submitted, or a statement in the notice for any air quality permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(5) the deadline to file comments or request a public meeting. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity. The notice must include a statement that the comment period will be for at least thirty days following publication of the Notice of Application and Preliminary Decision;

(6) if the application is subject to final approval by the executive director under Chapter 50 of this title, a statement that the executive director may issue final approval of the application unless a timely contested case hearing request or a timely request for reconsideration (if applicable) is filed with the chief clerk after transmittal of the executive director's decision and response to public comment;

(7) If the executive director prepares a Response to Comments as required by §55.156 of this title (relating to Public Comment Processing), the chief clerk will make the executive director's response to public comments available on the commission's website;

(8) in addition to the requirements in paragraphs (1) - (7) of this subsection, for air quality permit applications filed on or after June 18, 2010 for permits under Chapter 116, Subchapter B, Divisions 5 and 6 of this title (relating to Nonattainment Review Permits; and Prevention of Significant Deterioration Review):

(A) as applicable, the degree of increment consumption that is expected from the source or modification;

(B) a statement that the state's air quality analysis is available for comment;

(C) the deadline to request a public meeting;

(D) a statement that the executive director will hold a public meeting at the request of any interested person; and

(E) a statement that the executive director's draft permit and preliminary decision, preliminary determination summary, and air quality analysis are available electronically on the commission's website at the time of publication of the Notice of Application and Preliminary Decision; and

(9) in addition to the requirements in paragraphs (1) - (7) of this subsection, for air quality permit applications filed on or after June 18, 2010 for permits under Chapter 116, Subchapter E of this title:

(A) the deadline to request a public meeting;

(B) a statement that the executive director will hold a public meeting at the request of any interested person; and

(C) a statement that the executive director's draft permit and preliminary decision are available electronically on the commission's website at the time of publication of the Notice of Application and Preliminary Decision.

(g) When notice of a public meeting by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications filed on or after June 18, 2010, the text of the notice must include the information in this subsection. Air quality permit applications filed before June 18, 2010 are governed by the rules in Subchapters H and K of this chapter as they existed immediately before June 18, 2010, and those rules are continued in effect for that purpose.

(1) the information required by subsection (e)(1) - (3), (4)(A), (6), (8), (9), and (16) of this section;

(2) the date, time, and place of the public meeting, and a brief description of the nature and purpose of the meeting, including the applicable rules and procedures; and

(3) a brief description of public comment procedures, including a description of the manner in which comments regarding the executive director's draft permit and preliminary decision, and, as applicable, preliminary determination summary, and air quality analysis may be submitted and a statement in the notice for any air quality permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted.

(h) When notice of a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings) by publication or by mail is required by Subchapters H and K of this chapter for air quality permit applications, the text of the notice must include the following information:

(1) the information required by subsection (e)(1) - (3), (6), (9) and (16) of this section; and

(2) the date, time, and place of the hearing, and a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

SUBCHAPTER K: PUBLIC NOTICE OF AIR QUALITY PERMIT APPLICATIONS

§39.603

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and TWC, §5.115, Persons Affected in Commission Hearings' Notice of Application, which requires the commission to determine affected persons and provide certain notice of applications. The amendment is also adopted under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit

Review; Hearing, which prescribes the public participation requirements for certain applications filed with the TCEQ; and THSC, §382.058, concerning Notice of and Hearing on Construction of Concrete Plant Under Permit by Rule, Standard Permit, or Exemption, which prescribes authorization requirements for certain concrete batch plants. In addition, the amendment is also adopted under Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; and the Federal Clean Air Act, 42 United States Code, §§7401, *et seq.*, which requires states to submit state implementation plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The adopted amendment implements THSC, §382.056 and §382.058.

§39.603. Newspaper Notice.

(a) Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) is required to be published no later than 30 days after the executive director declares an application administratively complete. This notice must contain the text as required by §39.411(e) of this title (relating to Text of Public Notice). This notice is not required for Plant-wide Applicability Limit permit applications.

(b) Notice of Application and Preliminary Decision under §39.419 of this title (relating to Notice of Application and Preliminary Decision) is required to be published within 33 days after the chief clerk has mailed the preliminary decision concurrently with the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text as required by §39.411(f) of this title.

(c) Owners and operators who submit initial registration applications on or after January 1, 2017, for authorization to construct and operate a concrete batch plant under the Air Quality Standard Permit for Concrete Batch Plants adopted by the commission under Chapter 116, Subchapter F of this title (relating to Standard Permits) shall publish a consolidated Notice of Receipt of Application and Intent to Obtain Permit (NORI) under §39.418 of this title and Notice of Application and Preliminary Decision (NAPD) under §39.419 of this title no later than 30 days after the chief clerk has mailed the preliminary decision concurrently with the consolidated NORI and NAPD to the registrant. This notice must contain the text as required by §39.411(f) of this title.

(d) General newspaper notice. Unless otherwise specified, when this chapter requires published notice of an air quality permit application or registration, the applicant or registrant shall publish notice in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility, as follows.

(1) One notice must be published in the public notice section of the newspaper and must comply with §39.411(e) - (g) of this title.

(2) Another notice with a total size of at least six column inches, with a vertical dimension of at least three inches and a horizontal dimension of at least two column widths, or a size of at least 12 square inches, must be published in a prominent location elsewhere in the same issue of the newspaper. This notice must contain the following information:

(A) permit application or registration number;

(B) company name;

(C) type of facility;

(D) description of the location of the facility; and

(E) a note that additional information is in the public notice section of the same issue.

(e) Alternative publication procedures for small businesses.

(1) The applicant or registrant does not have to comply with subsection (d)(2) of this section if all of the following conditions are met:

(A) the applicant or registrant and source meets the definition of a small business stationary source in Texas Water Code, §5.135 including, but not limited to, those which:

(i) are not a major stationary source for federal air quality permitting;

(ii) do not emit 50 tons or more per year of any regulated air pollutant;

(iii) emit less than 75 tons per year of all regulated air pollutants combined; and

(iv) are owned or operated by a person that employs 100 or fewer individuals; and

(B) if the applicant's or registrant's site meets the emission limits in §106.4(a) of this title (relating to Requirements for Permitting by Rule) it will be considered to not have a significant effect on air quality.

(2) The executive director may post information regarding pending air permit applications on its website, such as the permit number, company name, project type, facility type, nearest city, county, date public notice authorized, information on comment periods, and information on how to contact the agency for further information.

(f) If an air application or registration is referred to State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings), the applicant or registrant shall publish notice once in a newspaper as described in subsection (d) of this section, containing the information under §39.411(h) of this title. This notice must be published and affidavits filed with the chief clerk no later than 30 days before the scheduled date of the hearing.